BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.,	)	
Southwestern Bell Telephone Company, and	)	
Southwestern Bell Communications Services,	)	CC Docket No. 01-88
Inc. d/b/a Southwestern Bell Long Distance for	)	
Provision of In-Region, InterLATA Services in	)	
Missouri	)	

APPLICATION BY SOUTHWESTERN BELL
FOR PROVISION OF IN-REGION, INTERLATA SERVICES
IN MISSOURI

REPLY APPENDIX

VOLUME 1

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FOR PROVISION OF IN-REGION, INTERLATA SERVICES
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Volume 1

Affidavits

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Missouri	)	

STATE OF TEXAS)
)
CITY OF SAN ANTONIO)

JOINT REPLY AFFIDAVIT OF LINCOLN E. BROWN AND JOHN S. HABEEB

I, Lincoln E. Brown, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. I am the same Lincoln E. Brown who previously filed an affidavit in this docket. I will be retiring from SBC Advanced Solutions, Inc. on May 15, 2001, after 33 years of service with SBC-affiliated companies, and John Habeeb, whose qualifications appear below, will be replacing me as Director-Regulatory and Interconnection for SBC Advanced Solutions, Inc.

I, John S. Habeeb, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

2. My name is John Habeeb. My business address is 300 Convent, Room 1998, San Antonio, TX 78205. I am Director-Regulatory and Interconnection for SBC Advanced Solutions, Inc. Effective May 15, 2001, I have assumed the position

previously held by Lincoln E. Brown, whose original affidavit was filed previously in this proceeding, and with whom I am writing this reply affidavit.

3. I hereby adopt the Initial Affidavit of Lincoln E. Brown filed in this proceeding as if it was originally submitted by me.

4. I began my career with SWBT in 1975 in Outside Plant Operations. From 1979 through 1988, I continued my career in Valuations and Separations. From 1989 to 1993, I worked as an Internal Auditor for the National Exchange Carrier Association (NECA/BellCore) in New Jersey. In 1993, I joined Southwestern Bell's Industry Analysis group in Austin, Texas where I was responsible for the accumulation and analyses of data relative to state and national regulatory/legislative issues dealing with telecommunications. In 2000, my organization was structured as part of SBC's corporate regulatory strategy group where I was responsible for strategy on state and national regulatory/legislative issues. I was appointed to my current position on May 1, 2001. I am responsible for regulatory matters for ASI. I have a Bachelor of Business Administration degree from Texas A&M-Kingsville, Kingsville, Texas.

5. The purpose of this reply affidavit is to respond to an issue raised in the Comments of AT&T Corp. ("AT&T Comments") filed in this Docket on April 24, 2001, concerning resale of DSL in compliance with Section 251(c) of the Telecommunications Act of 1996, and the decision of the U.S. Court of Appeals, D.C. Circuit in Association of Communications Enterprises v. Federal Communications Commission, No. 99-1441, Slip Op. (D.C. Cir. January 9, 2001) ("ASCENT").

6. In support of its argument that SWBT should be required to make all DSL services available for resale at the wholesale discount, AT&T contends that SWBT, not

ASI, holds itself out as a provider of "stand-alone" service described as "DSL Transport only" directly to end-user customers.[1] However, AT&T is twisting the language from the SWBT web-site to its own ends.[2] As AT&T acknowledges, the web-site clearly states that ASI, not SWBT, is the provider of the DSL transport service.[3] Pursuant to the Merger Conditions, SWBT is permitted to sell and market ASI's services on an exclusive basis, and does so under an affiliate transaction agreement between ASI and SWBT.[4] Furthermore, under the terms of the Merger Conditions only ASI, the separate affiliate created to own and operate Advanced Services, must provide DSL Transport Service until the separate affiliate requirements are permitted to sunset 9 months after the date upon which ASCENT became final and non-appealable.

7. In Lincoln Brown's initial affidavit, it was explained that ASI does provide some DSL Transport Services to business customers ("RLAN") and to a limited number of "grandfathered" residential customers. See Brown Aff. ¶ 41. ASI will make those services available for resale in accordance with all requirements of § 251(c)(4) now applicable as a result of ASCENT.

8. In Lincoln Brown's initial affidavit, it was explained that ASI's primary business in respect to DSL Transport Services is to provide DSL Transport as a wholesale service to Internet Service Providers ("ISPs"). AT&T suggests that SWBT and ASI have different business plans with respect to DSL Transport Services, and that even if "ASI's

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[1] AT&T Comments at 32-38.

[2] AT&T Comments at 34.

[3] See AT&T Comments at 34; AT&T's Finney Decl. ¶ 12.

[4] Memorandum Opinion and Order, Application of Ameritech Corp., Transferor, and SBC Communication Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712, 14970-14971, Appendix C ¶ 3a (1999).

business plan does not include mass-market DSL Transport services, SWBT's business plan unquestionably does so."[5] This is incorrect. There is but one business plan for DSL Transport Services. That business plan is to market DSL Transport Services to ISPs and not end-user customers. The SWBT web-site is part of the joint marketing and sales services SWBT provides to ASI under the SBC/Ameritech Merger Conditions. Its existence is not inconsistent with the business plan and goal of wholesale marketing the DSL Transport Services to ISPs. The web-site makes clear that in order for the end-user to use the "DSL Transport only" service, he/she must use an ISP. The ISP is the only entity that can combine the DSL Transport Service provided by ASI with the ISP's Internet Access Service, and sell that package of services on retail basis to its end-user customers. In some limited cases, as it is explained below, ASI arranges to bill and collect the charges for the DSL Transport Service separately for the ISPs.[6] But even in those limited circumstances, it is the ISPs who are the customers of ASI, and not the end-user. The end-user purchases a package of DSL Internet Access from the ISP, which includes the DSL Transport Service from ASI.

9. Split-Billing. In order to assist ISPs who need it, particularly small ISPs with limited resources, ASI offers ISPs the option of either billing the end-user separately for the DSL Transport Service ("split-billing"),[7] or billing the ISP directly for the DSL Transport Service (in which case the ISP would bill the end-user for the DSL Internet Access service bundled with the DSL Transport Service from ASI). If the ISP opts to

[5] AT&T Comments at 34.

[6] There were 202 split-billed orders out of 17,298 total orders for DSL Transport Services in Missouri between January 1, 2001 and May 2, 2001.

[7] "Split-billing" is where ASI bills charges for the DSL Transport Service to end-users, and the ISP charges are billed separately by the ISP.

have ASI bill the end-user separately for the DSL Transport Service, ASI collects DSL Transport charges, including installation, monthly recurring charges, and termination charges from end-users. In either case, however, ASI treats the ISP as the customer of record. For example, changes to the service, including termination of the DSL Transport Services, can be made only by the unaffiliated ISP, not the end-user.[8] Because the ISP could choose either direct or split-billing, ASI believes the DSL Transport Service to be merely a wholesale service offering with two billing options.

10. The fact that this split-billing option is nonetheless a wholesale serving arrangement in Missouri is further supported by the following indicia of a wholesale relationship:

a. DSL Transport Service cannot be purchased by an end-user on a stand-alone basis. When an end-user customer in Missouri calls to inquire about DSL services, they are sold Southwestern Bell DSL Internet Service from SBIS, and not "DSL with an ISP." If the caller states that they want to use an unaffiliated ISP as their DSL Internet Access provider,[9] they are transferred to the Internet Service Provider Service Center ("ISPSC"), which is a special group of service representatives set up to assist unaffiliated ISPs in the sale of DSL Transport Service. The ISPSC reps inform the caller whether the ISP they have specified has established ATM connectivity with ASI. If the ISP has established connectivity with ASI, the policy in the ISPSC requires the service representative to obtain the necessary end-user information and to direct the end-user to

[8] Where the DSL Transport Service is provisioned utilizing the line sharing UNE, in the event the end-user disconnects their basic telephone service, the complete disconnect order will also terminate the line-sharing UNE used by ASI to provide the DSL Transport Service.

[9] Approximately two-thirds of unaffiliated ISP DSL split-billed orders originate from the unaffiliated ISP, and the balance originate from end-users.

contact the specified ISP for Internet pricing information, including prices for the DSL Transport Service.

b. The unaffiliated ISP must have a business relationship with ASI and must have ATM connectivity with ASI before ASI will provide DSL Transport Service to an end-user customer. An end-user cannot order, nor can ASI provision, the DSL Transport Service used for Internet Access without selection of an ISP. Whether it is the end-user or the ISP who initiates an order for DSL Transport Service, the serving ISP must have connectivity to ASI's ATM network. Neither an ISP nor an ISPSC service representative can transmit an order for a particular ISP if that ISP does not have connectivity. ASI's order systems would reject the order as incomplete.

c. The unaffiliated ISP must accept the end-user as an Internet Access Service customer and provide the logical networking information before an order for DSL Transport Service will be accepted and provisioned by ASI. When an ISPSC service representative receives a request for service, he (a) determines whether the ISP specified by the end-user has connectivity with ASI, (b) collects certain customer information from the end-user, and (c) checks whether it is possible to provide the DSL Transport Service on the end-user's line. Where the unaffiliated ISP elects to assign the logical provisioning information themselves, the ISPSC will notify the ISP that an end-user is requesting service. The service representative will not do anything further to provision the DSL Transport Service until the ISP agrees to accept the order and the ISP provides logical networking information to the ISPSC necessary to provision the DSL

Service between the end-user's premises through to the ISP's network.[10] If the unaffiliated ISP refuses to provide the Internet Access Service, the end-user's request for DSL Transport Service will be declined. Where the unaffiliated ISP has preassigned the logical provisioning information, the ISPSC notifies the ISP of the new end-user customer via CPSOS or electronic mail. The unaffiliated ISP has the opportunity to refuse to provide the Internet Access Service to the end-user.

d. The ISP determines what price the end-user will pay for DSL Transport Service. The price charged by ASI for the DSL Transport Service is subject to agreement between the ISP and ASI. ASI then bills that price either directly to the ISP, or to the end-user under the split-billing arrangement.[11]

e. The ISP determines whether it will bill the end-user for the combination of DSL Transport Service and Internet Access Service, or whether it wants ASI to bill the end-user for the DSL Transport Service. The ISP makes a general election to have the DSL Transport billed to it, or to have SBC provide split-billing to all its end-users. If the ISP chooses to have the DSL Transport billed directly to the ISP, then an end-user will not be split-billed, even if the end-user requests split-billing.

f. The ISP authorizes disconnection of DSL Transport Service. SBC's practice in the ISPSC is that only the ISP can disconnect the DSL Transport service on the end-user's line. If an end-user contacts the ISPSC to request termination

[10] Logical networking information includes the virtual path or virtual circuit information through the ATM network, including the ATM connect point, through which the end-user's data traffic will be directed.

[11] The ISP must have executed a DSL services agreement to receive a price below $39.00 per month for the DSL Transport Service. The ISP can choose to take service at the $39.00 recurring charge available to all ISPs without executing a separate DSL service agreement. Either way, the ISP must execute an Agreement with ASI for ATM services in order to establish connectivity.

of the DSL Transport Service, the end-user is directed to contact the ISP.[12] The service will not be disconnected until the ISP authorizes ASI to do so.[13]

g. The ISP is responsible for providing first tier customer care and support for the end-user. End-users are encouraged to call their ISPs in regard to any trouble with their Internet service. Unaffiliated ISPs can submit trouble reports to ASI on end-user lines even when the DSL Transport is split-billed. If the end-user calls the ISPSC to report trouble with their DSL Internet Access Service, the ISPSC service representative is required to refer the end-user to his or her ISP.

h. ISPs must authorize and arrange for disconnection and reconnection of the DSL Transport Service if an end-user wants to switch ISPs. The end-user cannot request that the DSL Transport service be switched to utilize a different ISP. The end-user is directed to call their current ISP to disconnect the DSL Transport Service and to call their new ISP to arrange for the DSL Transport to be re-installed with the new ISP.

i. ISPs electing split-billing can take orders for DSL Transport Service directly from the end-user. The ISP utilizing split-billing can take an end-user's order itself, and transmit the order for the DSL Transport Services to the ISPSC for fulfillment without any communication between ASI/SWBT and the end-user.

j. ASI has no contractual relationship with the end-users in Missouri that are customers of ISPs who elect split-billing. No end-user agreements are required

[12] This is done so that the ISP can attempt to retain the end-user, and to inform the end-user of any applicable termination fees charged by the ISP.

[13] See footnote 8.

for the provision of DSL Transport Services under a split-billing arrangement in Missouri. All terms and conditions, and all DSL service agreements, are between ASI and the ISP.

11. ASI has allowed ISPs to select this split-billing arrangement in an accommodation to the needs of the smaller unaffiliated ISPs. In the event that the Commission finds the split-billing serving arrangement to be a retail service offering, ASI will discontinue offering ISPs the opportunity to use split-billing in connection with the DSL Transport Service.

12. This concludes our reply affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

LINCOLN E. BROWN
DIRECTOR-REGULATORY AND
INTERCONNECTION
SBC ADVANCED SOLUTIONS, INC.

Subscribed and sworn before me on this 15th day of May 2001.

NOTARY PUBLIC

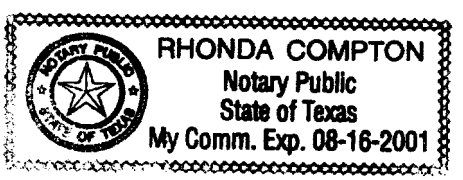
RHONDA COMPTON
Notary Public
State of Texas
My Comm. Exp. 08-16-2001

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

JOHN S. HABEEB
DIRECTOR-REGULATORY AND
INTERCONNECTION
SBC ADVANCED SOLUTIONS, INC.

Subscribed and sworn before me on this 15th day of May 2001.

NOTARY PUBLIC



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Missouri	)	

REPLY AFFIDAVIT OF CAROL CHAPMAN

STATE OF TEXAS)
)
COUNTY OF DALLAS)

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WHOLESALE PROVISIONING OF ADVANCED SERVICES AFFIDAVIT

1. My name is Carol A. Chapman. I am the same Carol A. Chapman who previously filed an affidavit in this docket.

2. In this reply affidavit, I will address comments made by WorldCom, AT&T, and McLeodUSA regarding SWBT's line sharing, line splitting and Broadband Service offerings.

3. These comments all claim that the *Line Sharing Reconsideration Order* imposed new obligations on SWBT. However, the *Line Sharing Reconsideration Order* did not modify SWBT's obligations related to line sharing, line splitting or the Broadband Service. Instead, that order clarified ILECs' existing obligations under the *Line Sharing Order*. The FCC determined in the *Kansas/Oklahoma 271 Order* that SWBT had met its line sharing obligations in Kansas and Oklahoma. SWBT's offering in Missouri for line sharing and line splitting is consistent with that already evaluated by the FCC in the *Kansas/Oklahoma 271 Order*. Thus, these CLECs are simply wrong in contending that different obligations apply to SWBT's advanced services offerings because of the *Line Sharing Reconsideration Order*.

SWBT'S LINE SHARING OFFERING

4. In the *Line Sharing Reconsideration Order*, the FCC made it clear that ILECs must make line sharing available to CLECs in cases where the end user was served by a digital loop carrier.[1] As paragraph 10 of the *Line Sharing Reconsideration Order* acknowledges, "[t]he 'high frequency portion of the loop' is defined as the frequency

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order on Reconsideration in CC Docket No. 98-147 Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions." That paragraph goes on to recognize that, access to the high-frequency portion of a copper loop is not limited to copper, and notes that this might be provided by offering leasing of available dark fiber feeder subloops. The further notice of proposed rulemaking goes on to pose questions about potential future rules governing such access.[2]

5. SWBT's advanced services offerings in Missouri are entirely consistent with the *Line Sharing Reconsideration Order*. SWBT allows CLECs in Missouri to line share over copper facilities. In order to access the copper facility in situations where the end user is served by digital loop carrier, SWBT permits CLECs to access the copper facility at a remote terminal or other accessible subloop access point, and purchase available dark fiber or subloop feeder facilities.

6. The *Line Sharing Reconsideration Order* is clear that CLECs may access the High Frequency Portion of the Loop ("HFPL") utilizing Digital Subscriber Line Access Multiplexer ("DSLAM") equipment located in either the central office or the remote terminal ("RT"). The CLEC has the option of utilizing either or both locations if technology permits. AT&T tries to rewrite the *Line Sharing Reconsideration Order* to require actual line sharing over the fiber portion of the loop. However, with today's technology, the facility between the DSLAM equipment and the end user's location must be all copper. This is true whether the DSLAM is located at the central office or the RT. DSL technology today does not allow a CLEC to access a fiber-fed loop via their central office located DSLAM equipment.

[2] *Line Sharing Reconsideration Order* ¶¶ 10, 55-64.

7. SWBT does allow CLECs to locate their DSLAM equipment at the central office or at a remote terminal location, just as the FCC stated in paragraph 11 of the *Line Sharing Reconsideration Order*. In cases where SWBT has both all copper loops and DLC loops serving a particular customer, the CLEC may choose to provide service to the customer via a DSLAM located at either the central office or the RT. In this way, SWBT fully complies with the obligations of the *Line Sharing Order*[3] and the *Line Sharing Reconsideration Order*.

SWBT ENABLES CLECS TO ENGAGE IN LINE SPLITTING

8. As explained in my initial affidavit in this docket, SWBT's current offering in Missouri does allow CLECs to engage in line splitting as described by the FCC in the *Line Sharing Reconsideration Order*.[4] Line splitting is the shared use of an unbundled loop for the provision of voice and data services.

9. SWBT's standard UNE order flows are utilized for line splitting when the CLEC is requesting a brand new service arrangement (no reuse of facilities from an existing service). In this case, the CLEC simply orders any necessary UNEs using established order flows for any needed element (such as an xDSL-capable loop and unbundled switching with transport).[5] The terms and conditions under which a CLEC orders unbundled elements for use with line splitting are no different from the terms and conditions under which a CLEC orders the same unbundled elements in a non-line splitting situation. Although the CLEC may be utilizing the UNEs for line splitting,

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[3] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, 14 FCC Rcd 20,912 (1999) ("*Line Sharing Order*").

[4] *Line Sharing Reconsideration Order* ¶¶ 14-26.

[5] *See* the affidavit of Elizabeth Ham, ¶¶ 107-157, for a discussion on the ordering interfaces used by CLECs to order these UNEs.

the actual UNEs are no different from an ordering and provisioning perspective than UNEs ordered for other purposes.

10. In addition to SWBT's established order flows for new UNEs used to provide line splitting, SWBT, as suggested by the *Line Sharing Reconsideration Order*,[6] is currently meeting with interested CLECs to develop improved order processes for situations where a CLEC wishes to engage in line splitting reusing facilities previously used as part of a UNE-P arrangement or line shared arrangement.

11. WorldCom complains that SWBT will not introduce a single-order conversion process until later this year.[7] However, WorldCom fails to mention that, although SWBT has been willing to work with interested CLECs on process improvements for line splitting ordering for over a year, CLECs have only begun to meet with SWBT to request specific modifications to the order process over the last few months. As a result of these meetings, SWBT is currently developing a single LSR process to facilitate these types of requests to be rolled out later this year. Contrary to the picture painted by WorldCom, SWBT is working expeditiously to meet CLECs requests.

12. In the meantime, CLECs wishing to convert existing service to line splitting may do so by issuing disconnect and new connect orders for the necessary elements. SWBT has committed to manage these separate orders upon request to ensure service disruption is limited to that experienced when adding line sharing to an existing POTS line. No CLEC involvement is required in this order management after the initial request. The internal handling performed by SWBT simply ensures that

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[6] *Line Sharing Reconsideration Order* ¶ 21.

[7] WorldCom Comments at 17.

SWBT performs the physical work associated with the disconnect and new connect orders in the same manner as the physical work performed for a line sharing order with a CLEC-owned splitter. Although SWBT offers this interim migration process to CLECs interested in engaging in line splitting, no CLEC to date has utilized it.

13. McLeod implies that SWBT should be required by the T2A to allow CLECs to engage in line splitting with a SWBT-owned splitter.[8] As referenced in the *Texas 271 Order*, this is not the case.[9] In any event, this Commission has made it very clear that there is no obligation for ILECs to provide splitters under any circumstances.[10] SWBT's provisioning systems throughout its five-state region do not support line splitting with an ILEC-owned splitter, and implementation of such a system would be costly, troublesome, and unnecessary. Although McLeod claims that by not providing splitters for line splitting SWBT is limiting competition, the opposite is true. Splitters are relatively inexpensive pieces of equipment – particularly when compared to the DSLAM equipment used by data providers. Data CLECs wishing to distinguish themselves from other CLECs can choose to invest in splitters and enter into business arrangements with voice CLECs to engage in line splitting.

14. McLeod also incorrectly claims that the M2A language originally proposed by SWBT prohibited CLECs from line splitting.[11] This is not the case, and in any event it is irrelevant to this proceeding what was originally proposed for the M2A. The specific

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[8] McLeod Comments at 33.

[9] *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18,354, 18,516-517, ¶¶ 327-329 (June 30, 2000) ("*Texas 271 Order*").

[10] *Line Sharing Order*, 14 FCC Rcd at 20,949, ¶ 76; Texas *271 Order* ¶¶ 327-329.

[11] McLeod Comments at 32, 33.

language at issue is the same as the ambiguous K2A line splitting language that SWBT agreed to modify in the Kansas/Oklahoma 271 proceeding. As explained in the Kansas/Oklahoma 271 proceeding, the language in question was never intended to prevent a CLEC from engaging in line splitting and, in any case, this language has been deleted from the M2A.

15. SWBT's current offerings in Missouri thus allow CLECs to engage in and meet all requirements for line splitting. In the *Texas 271 Order,* and again in the *Kansas/Oklahoma 271 Order*, this Commission rejected arguments that SWBT did not meets its line splitting obligations, finding that SWBT's offering met all FCC requirements.[12]

16. SWBT allows CLECs to perform line splitting in Missouri in the same manner as it does in Texas, Kansas and Oklahoma.

SWBT'S BROADBAND SERVICE OFFERING

17. AT&T also makes a number of claims regarding SWBT's obligation to unbundle the "entire loop."[13] However, AT&T completely ignores the fact that in the FCC's definition of the unbundled loop, the FCC specifically excludes equipment utilized for the provision of advanced services such as a DSLAM. And yet advanced services equipment is precisely what is unique about the Broadband Service architecture that has been deployed as part of SWBT's Project Pronto initiative.

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[12] *Texas 271 Order* ¶¶ 323-29; *Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶¶ 220-21 (rel. Jan. 22, 2001) ("*Kansas/Oklahoma 271 Order*").

[13] AT&T Comments at 38-43.

18. AT&T witness, Scott L. Finney, states that "[c]onsumers are increasingly demanding reasonably-priced, high-speed services."[14] However, Mr. Finney fails to mention that the competitive leader in the high-speed market is not SWBT, or any ILEC. In fact, the leading provider for high-speed connections is AT&T via its cable modems. Although it may be in AT&T's interest as a cable provider to impose new burdensome regulation on SWBT's new Broadband Service offering, it would not be beneficial to the deployment of new technology.

19. Contrary to AT&T's assertion,[15] the *Line Sharing Reconsideration Order* did not require that SWBT's Broadband Service architecture be unbundled. In fact, in the *Clarification Order*, the FCC clearly stated that the *Line Sharing Reconsideration Order* did not expand the limited circumstances under which an ILEC must provide unbundled packet switching established in the *UNE Remand Order*.[16] AT&T's filing attempts to confuse SWBT's obligation to provide access to the high-frequency portion of a subloop fed by digital loop carrier with a non-existent obligation for SWBT to "line share" over the digital loop carrier itself.

20. The *UNE Remand Order* did establish a limited obligation to unbundle packet switching for advanced services.[17] SWBT currently has no packet switching for advanced services within its existing network that meet the unbundling criteria; instead, consistent with the SBC/Ameritech Merger Conditions, SBC Advanced

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[14] AT&T's Finney Decl. ¶ 34.

[15] AT&T Comments at 38-43.

[16] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Order Clarification, CC Docket No. 98-147, DA 01-480, ¶ 1 (rel. Feb. 23, 2001) ("*Clarification Order*"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*").

[17] *UNE Remand Order*, 15 FCC Rcd at 3832-40, ¶¶ 300-317.

Solutions, Inc. ("ASI"), owns all SBC packet switches used to provide advanced services in Missouri, with the exception of the packet switching contained in the Broadband Service offering.[18] However, SWBT's interconnection agreements contain a binding legal commitment to provide CLECs with unbundled access to such packet switching if such conditions ever apply to SWBT's operations.

21. In my federal affidavit in the Kansas/Oklahoma 271 proceeding, SWBT explained in detail that its Broadband Service offering is not part of any checklist item – and therefore is not a 271 issue.[19] This Commission properly found that the issue was not ripe for review in that proceeding, and the same pertinent facts exist in Missouri today as in Kansas and Oklahoma.[20] Specifically, no party has requested packet switching in Missouri, and the Missouri Commission has not ruled on the issue. Accordingly, as in the Kansas/Oklahoma 271 proceeding, this issue should not be considered as part of this proceeding.

22. Based upon the FCC's handling of these issues in the Kansas/Oklahoma 271 proceeding, I did not include a detailed discussion of the issues in my initial Missouri affidavit. Instead, in light of this and the fact that issues associated with SWBT's Broadband Service offering were evaluated recently by this Commission in the *Project Pronto Order*, and that similar issues were recently put out for public notice

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[18] SWBT's Broadband Service offering is an integrated service that utilizes a form of packet switching. The packet switching portion of the Broadband Service offering does not fit the definition of the unbundled packet switching element. See the affidavit of Lincoln Brown and joint reply affidavit of Lincoln Brown and John Habeeb for a discussion of ASI's provision of advanced services in Missouri.

[19] Chapman Aff. ¶¶ 111-131, attached to *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (FCC filed Oct. 26, 2000).

[20] *See Kansas/Oklahoma 271 Order* ¶¶ 244-45.

in the *Line Sharing Reconsideration Order*,[21] I merely cited my comments from the Kansas/Oklahoma 271 proceeding. AT&T and other CLECs continue to attempt to improperly raise SWBT's Broadband Service offering as a 271 issue, but they fail to provide anything specific for the Commission to make a decision on in this proceeding. Nonetheless, in order to provide a complete record in response to opponents' comments, and despite the fact that the Commission has made it clear that this issue is not relevant in a 271 proceeding in the manner in which it has been raised by these opponents, I address these arguments briefly below.

SWBT's Broadband Service Offering Is Innovative and Beneficial to Both CLECs and Consumers in Missouri

23. Project Pronto is a network enhancement initiative, in which SBC plans to invest six billion dollars enhancing its network. One of the objectives of this investment is to bring fiber deeper in to neighborhoods across its 13-state region. This deployment of facilities will drastically increase the availability of xDSL to consumers and, with SWBT's Broadband Service offering, create a brand new market for data providers.

24. With the Broadband Service offering, SWBT has developed and offered to provide new advanced services product offerings that will operate over new facilities deployed as part of Project Pronto. These new offerings are in addition to all of the unbundled options available to CLECs under current rules. So, not only will SWBT provide access to all of the unbundled network elements required, it also has gone beyond the requirements to offer a brand new option – the Broadband Service. SWBT's Broadband Service offering will broaden the customer base for data CLECs.

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[21] *See Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control*, Second Memorandum Opinion and Order, 15 FCC Rcd 17,521 (2000) ("*Project Pronto Order*"); *see also Line Sharing Reconsideration Order* ¶¶ 55-64.

The Broadband Service is available to all CLECs, including ASI, on the same terms and conditions.

25. In the *Project Pronto Order*, the Commission granted SWBT and its affiliated ILECs authority to own the advanced services equipment utilized to provide the Broadband Service offering.[22] SWBT now is offering the Broadband Service to all CLECs, including its advanced services affiliate, on nondiscriminatory terms and conditions.

Project Pronto Is an Overlay Network That Creates New Opportunities for Data Providers

26. Project Pronto is an investment in an overlay network. An overlay network is unique in that instead of replacing or upgrading the existing network (for instance, changing out an outdated switch), brand new facilities are deployed *in addition* to the existing facilities. This translates into new opportunities and new customers above and beyond all of the opportunities already available.

27. One of the fundamental goals of the Federal Telecommunications Act of 1996 ("FTA") is "to promote innovation and investment by all participants in the telecommunications marketplace."[23] SBC's massive investment in the Project Pronto architecture is precisely the type of behavior the FTA intended to promote. The FCC has already found that the SWBT Broadband Service offering not only serves the public interest, but also is beneficial to competition. In the *Project Pronto Order*, the FCC stated:

> In particular, we find that SBC's proposal should affirmatively and identifiably promote the rapid deployment of advanced services in a pro-competitive manner, thereby serving the goals of section 706. Granting SBC permission will speed the deployment of ADSL service availability to 77 million consumers within three

[22] *See Project Pronto Order*, 15 FCC Rcd at 17,532-533, ¶¶ 22-23.

[23] *UNE Remand Order*, 15 FCC Rcd at 3699, ¶ 2.

> years. In particular, SBC's Project Pronto will eliminate the distance limitations that prevent many consumers from obtaining DSL services today, and allow consumers served by remote terminals to receive DSL service where they otherwise would not. Millions of consumers that presently do not have access to advanced services thus will benefit from advanced services capabilities throughout SBC's service territory. Granting SBC's request to allow its incumbent LECs to own this equipment will allow SBC's Advanced Services Affiliate (and other carriers) to begin offering service to these consumers sooner than otherwise would be the case. In addition, SBC's proposal enables competing carriers to effectively resell SBC's ADSL service, and thereby provides these CLECs with an immediate opportunity to compete against SBC in the mass market.[24]

28. Because Project Pronto is an overlay network investment, rather than a replacement of the embedded network, none of the existing unbundling options available to CLECs today are altered in any way. Instead, CLECs are able to continue to utilize all currently available unbundled elements and take advantage of SBC's investment through SBC's voluntary offering of the Broadband Service product.

29. Likewise, the Broadband Service architecture deployed as part of Project Pronto will not limit CLEC options in new neighborhoods. With the exception of IDSL which can be provisioned over fiber facilities, including those deployed as part of the Project Pronto initiative, xDSL technologies utilize copper facilities. Current engineering design standards frequently call for the use of digital loop carrier for end user locations that are not close to the central office and would prevent the use of a central office-based xDSL technology. These are precisely the end user locations that will benefit from the Broadband Service architecture. Again, the Broadband Service architecture provides CLECs with opportunities that would not be available otherwise.

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[24] *Project Pronto Order*, 15 FCC Rcd at 17,533-534, ¶ 23 (footnotes omitted).

Network Investments Such as Project Pronto Are Beneficial to the Public and Must Be Encouraged

30. Commenters in this proceeding have implied that SWBT's Project Pronto and Broadband Service offering are not in the public interest. However, the opposite is true. Obviously, a six billion-dollar initiative has substantial impact on the public. Discouraging this type of investment is bad public policy and harmful to the very consumers the FTA intended to benefit. The FCC recognized some of the benefits of SWBT's Broadband Service offering in the *Project Pronto Order*, stating "we expect consumers will benefit not only from a more rapid deployment of advanced services, but from the increased choices that stem from the competitive safeguards contained in SBC's proposal."[25] The FCC went on to conclude that "SBC's proposal serves the public interest" and "should provide consumers a greater choice of both services and providers in the near term."[26]

31. Large network investments, such as Project Pronto, equate to additional jobs. These jobs include the ILEC employees who implement the deployment of the network as well as the employees of the various vendors, suppliers, and contractors supporting the project.

32. The Broadband Service will provide a choice of competitive advanced services technology that is not available today for 77 million consumers. This will enable more schools to access the broadband services that are becoming increasingly important in today's technological society. It will promote telecommuting, which

[25] *Id.* at 17,521-522, ¶ 2.

[26] *Id.* at 17,533-534, ¶ 23.

opens up many previously unavailable opportunities to the disabled and homebound, as well as providing environmental benefits through decreased need for commuting.

33. This is precisely the kind of investment the FTA envisioned. Such investment should be encouraged and recognized as beneficial to CLECs as well. This is particularly true in the case of the investment associated with the Broadband Service offering. The broadband market is a competitive, emerging market. However, this market is not simply a battle between different providers offering essentially the same service. The broadband market pits vastly different technologies and network architectures against each other. In order to remain competitive in the broadband market, DSL providers must not only compete with other DSL providers, but also with other technologies, including cable modem (the leading broadband technology), fixed wireless, and satellite broadband. Network investments designed to support such a competitive product must not only be able to support a desired service offering, but also be able to do so in a manner that is efficient enough to provide a sound return on the investment while remaining competitive with other technologies.

SWBT's Broadband Service Offering Creates New Business Opportunities for CLECs

34. The Broadband Service offering creates new business opportunities for CLECs. Under the Broadband Service architecture, data CLECs will be able to provide high-speed data service to millions of new customers that may not otherwise be economically attractive to serve. At the same time, data CLECs retain all of the existing unbundling options currently available today including obtaining xDSL-capable loops, line sharing, and sub-loop unbundling and line sharing.

35. This new market opportunity is particularly important to xDSL providers. In today's environment, the availability of cable modems far surpasses the availability of xDSL technologies. This type of massive network investment is necessary for the continued growth and development of xDSL-based technologies. Without widespread marketing availability, the incentive for new innovations decreases.

36. One of the goals of the FTA was to "reduce inherent economic and operational advantages" the ILECs had over competitors due to the ownership of the embedded network that had been built in a monopolistic environment.[27] New investments such as Project Pronto are not an inherited asset of the ILEC, but an investment made in today's competitive environment from which the investor expects to receive a good return.

SWBT's Broadband Service Is Neither a Combination of UNEs, Nor a Single UNE

37. In order for SBC's Broadband Service to be considered a combination of UNEs, it would need to be made up exclusively of individual unbundled network elements. However, this is not the case. As explained below, the Broadband Service contains elements that do not meet the definition of a UNE.

The Broadband Service is Not an Unbundled Loop

38. The Broadband Service does not fall under the definition of an unbundled loop for several reasons.

39. The facilities between the end users and the central office are shared facilities and do not provide exclusive use to any CLEC or direct access to a single end user. The Broadband Service is not a transmission facility between a distribution frame (or its

[27] *UNE Remand Order*, 15 FCC Rcd at 3699, ¶ 3.

equivalent) in an incumbent LEC central office and the loop demarcation point at an end user customer premises.

40. The facilities and equipment comprising the Broadband Service cannot be dedicated to the exclusive and unrestricted use of a single carrier, as is required for a UNE under 47 CFR §§ 51.307-51.309.

41. The Broadband Service utilizes packet switching equipment (*i.e.*, the optical concentrating device in the central office and the DSLAM functionality at the RT) that, as explained below, has been determined not to be a part of the unbundled loop (*i.e.*, it is not attached electronics that are included in the definition of an unbundled loop). Again, the Broadband Service, which does include packet switching, cannot be considered an unbundled loop.

The Broadband Service Does Not Contain Unbundled Packet Switching

42. The Broadband Service offering also does not comply with the definition of unbundled packet switching. The FCC previously determined that packet switching is generally not a UNE and is not required to be unbundled unless all of the following conditions are met:[28]

- *The ILEC has deployed digital loop carrier systems or any other system in which fiber optic facilities replace copper facilities between the central office and the remote terminal, pedestal or environmentally controlled vault.* Since Project Pronto is an overlay network, SBC is not replacing copper facilities with fiber optic facilities.

[28] *Id.* at 3838-39, ¶ 313.

- *There are no spare copper loops capable of supporting the CLEC's desired xDSL service.* In general, this analysis will depend on a case by case analysis, depending upon the desired technology and the length of the copper loop for a specific arrangement. This fact-specific analysis thus must be addressed on a case-by-case basis, cannot be meaningfully addressed in the absence of specific facts, and is entirely inappropriate to address in a 271 context.
- *A CLEC has requested to collocate a DSLAM at a subloop interconnection point, and has been denied, and the CLEC has not obtained virtual collocation arrangement at a subloop interconnection point.* SWBT will not deny collocation at any technically feasible interconnection point. In fact, SBC's voluntary commitments assure that CLECs "will be able to access SBC's remote terminals and compete for consumers served through remote terminals."[29]
- *The incumbent LEC has deployed packet switching capability for its own use.* The packet switching capability is only used as part of the wholesale Broadband Service SBC offers to CLECs and not for any SWBT retail offering.

43. As is clear in Rule 51.319(d)(5), all four conditions must be met before an ILEC is required to unbundle packet switching – and in no circumstances will all of these be present in SWBT's network. This is primarily because no copper loops are being replaced and wherever the Project Pronto DSLAM functionality has been deployed in an RT site, SBC's voluntary commitments will assure that the CLECs will have an opportunity to place their own DSLAM equipment at or near those same sites.[30]

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[29] *Project Pronto Order*, 15 FCC Rcd at 17,539-540, ¶ 34.

[30] *Id.* As explained previously, if a future network configuration deployed by SWBT satisfies all four of the conditions associated with the unbundling of packet switching, SWBT would be contractually obligated to provide access to unbundled packet switching in that instance.

The Broadband Service Contains Copper Facilities That Are Neither Unbundled Loop Nor Subloop.

44. As explained above, the Broadband Service offering does not contain an unbundled loop element. Neither are all of the copper facilities utilized in the Broadband Service offering part of a subloop. The copper facility between the RT and Service Area Interface ("SAI") is not accessible at both ends, as there is no access point at the RT itself to the copper pair. As such, this facility does not comply with the definition of a subloop. This copper facility also could not be considered part of a larger subloop from the SAI to the central office for all of the same reasons listed above as to why the Broadband Service is not an unbundled loop (the use of packet switching function, the fact that a CLEC would not have exclusive use of the facility, and the fact that facilities involved do not provide access to a single end user).

45. Clearly, the copper facility between the RT and the SAI utilized in the Broadband Service offering is not a UNE in and of itself, nor is it a part of a UNE. Obviously, since the individual elements that comprise the Broadband Service offering are not UNEs, the Broadband Service itself cannot be considered a combination of UNEs and, therefore, not part of any checklist item.

Imposing Unbundling Requirements on the Project Pronto Architecture Would Discourage Investment

46. WorldCom makes several comments related to a letter sent by SBC Chairman and CEO, Ed Whitacre, to the Speaker for the U.S. House of Representatives, J. Dennis Hastert.[31] Although WorldCom did include Illinois Commerce Commissioner Terry

[31] WorldCom Comments at 17-18. WorldCom's comments identified the recipient of the letter as U.S. Congressman, W. J. Tauzin. Although Congressman Tauzin did receive a copy of the letter, the letter, as shown attached in Tab C of WorldCom's comments, was addressed to Speaker Hastert.

S. Harvill's letter addressing some of the issues raised by Mr. Whitacre, it is telling to note that WorldCom did not attach Mr. Whitacre's letter responding to Commissioner Harvill's allegations. A copy of Mr. Whitacre's April 6, 2001 letter addressing Commissioner Harvill's comments is provided as Attachment A to this affidavit.

47. The letters sent by Mr. Whitacre on behalf of SBC address, are, in part, due to adverse regulatory decisions in Illinois, where SBC has "been forced to halt indefinitely further deployment and activation of new DSL facilities [ ] that would have made high-speed Internet service available to over a million Illinois consumers." As a result, "(t)hose consumers cannot now, and may never, have access to DSL service."[32]

48. WorldCom claims these statements undermine SBC's commitment to providing CLECs with the "necessary elements to provide DSL service."[33] This is not the case. CLECs have the ability to provide these consumers with DSL service today by remotely locating their DSLAM equipment and utilizing xDSL-capable subloops or HFPL subloops. However, the ability to provide a service and the choice to do so are two different things. SBC had chosen to provide DSL service to these consumers and was proactively investing in network equipment in order to do so. Unfortunately, as a result of regulatory rulings in Illinois, it is no longer economically feasible or competitively reasonable for SBC to invest in and provide DSL service via its Broadband Service architecture in Illinois at this time.

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[32] *See* Letter from Ed Whitacre, SBC, to the Honorable J. Dennis Hastert, Speaker, U.S. House of Representatives (March 14, 2001).

[33] *See* WorldCom Comments at 18.

49. Both of SBC's letters call for a truly open and competitive advanced service market. This cannot occur when new network investment intended to further the deployment of a non-dominant technology, DSL, is regulated in a manner that ensures it cannot remain competitive with the non-regulated dominant technology, cable modem, or other non-regulated competitive technologies such as fixed wireless and satellite.

CONCLUSION

50. The *Line Sharing Reconsideration Order* clarified the ILEC obligations already evaluated by the FCC in the Kansas/Oklahoma 271 proceeding. SWBT's offerings for line sharing, line splitting, and the Broadband Service fully satisfy these obligations and provide CLECs with a meaningful opportunity to compete.

51. This concludes my affidavit.

I hereby swear and affirm that the information contained in the attached affidavit is true and correct to the best of my knowledge and belief.

Carol Chapman

Subscribed and sworn to before me on this 14th day of May 2001.

Virginia L. Hampton
Notary Public

VIRGINIA L. HAMPTON
Notary Public, State of Texas
My Commission Expires 07-31-04